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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

CLAUDIA GUIDARA,

Petitioner,

v.

THE SUPERIOR COURT OF ALAMEDA  
COUNTY,

Respondent;

DIANNA SANTOS,

Real Party in Interest.

A137294

(Alameda County  
Super. Ct. No. VG11554270)

THE COURT:\*

Claudia Guidara filed a petition for writ of mandate challenging an order from respondent superior court overruling her demurrer. We requested a response from real party in interest Dianna Santos and notified her we were considering issuing a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) We shall now issue the writ.

It is apparent from the face of the complaint that Santos's claims against Guidara are barred by the applicable statute of limitations. Santos filed her complaint on January 4, 2011. Santos alleged she had suffered damages caused by Guidara in a motor

\* Ruvolo, P.J., Reardon, J., Rivera, J.

vehicle accident that occurred on March 14, 2008. The filing date is outside the applicable two-year statute of limitations. (Code Civ. Proc, § 335.1.) Presumably in an attempt to plead around the statute of limitations, Santos included the following allegation in her complaint: “Defendant has been out of the country and unavailable for service of process since approximately June 2008 and the statute of limitations for this action is therefore tolled.”

It is undisputed that Guidara is not a California resident.<sup>1</sup> A nonresident who operates a motor vehicle on California roads implicitly consents to the appointment of the director of the California Department of Motor Vehicles (DMV) as agent for service of summons for automobile accident lawsuits. (Veh. Code §§ 17451, 17453.) After serving the director in Sacramento (§ 17454), a plaintiff completes service by mailing notice of service to the defendant by registered mail or, alternatively, personally serving the notice (§ 17455).

It is now well established there is no tolling of the statute of limitations (Code Civ. Proc., § 351) in automobile accident cases involving nonresidents notwithstanding their absence from the state. (*Litwin v. Estate of Formela* (2010) 186 Cal.App.4th 607, 614-618 (*Litwin*); *Bigelow v. Smik* (1970) 6 Cal.App.3d 10, 14.) “Because a nonresident motorist can be sued and a personal judgment obtained against him or her in California at any time, there is no reason to toll the applicable limitations period based on absence from the state and CCP § 351 is inapplicable.” (Haning et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2012) ¶ 5:129.5, p. 5-105.)

Santos pleaded no facts regarding service beyond her vague allegation that Guidara had been out of country and was “unavailable.” Santos did not allege service on the director of the DMV in compliance with the Vehicle Code. In *Litwin, supra*, 186 Cal.App.4th 607, a case very similar to the instant case, the plaintiff at least alleged that he served the director (*Id.* at p. 610), but the plaintiff claimed he could not locate the

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<sup>1</sup> Santos personally served Guidara with the summons and complaint in Brazil on June 20, 2012.

defendant in Germany (*Id.* at p. 611). Even so, the demurrer was sustained in *Litwin* and affirmed on appeal. (*Id.* at pp. 618-619.)

Guidara's demurrer should have been sustained. We leave it to respondent superior court to determine whether Santos should be allowed to amend her pleading. Santos has never stated, in either her opposition filed below or in her opposition to the petition before us, that she served the director of the DMV within two years of the accident. The inability to so allege would be fatal to her lawsuit. (*Litwin, supra*, 186 Cal.App.4th at pp. 618-619.)

Let a peremptory writ of mandate issue commanding respondent Superior Court of Alameda County to vacate its October 26, 2012 order overruling the demurrer and to enter a new order sustaining the demurrer. Respondent court shall exercise its discretion as to whether to allow leave to amend. Guidara shall recover her costs for this proceeding. (Cal. Rules of Court, rule 8.493(a).) This opinion is final as to this court immediately. (Rule 8.490(b)(3).)